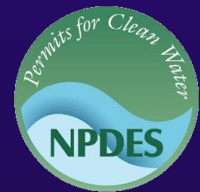




# Concentrated Animal Feeding Operations (CAFOs)

**CWA Authorities and Revisions to National  
Pollutant Discharge Elimination System (NPDES)  
CAFO Rule**

**Nicholas Peak  
EPA, Region 10**



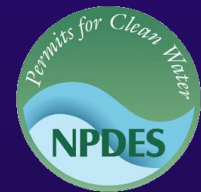


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# How does the Clean Water Act (CWA) Apply to CAFOs?





# CWA Section 301 and 402

- 301(a): Except as in compliance with this section and section . . . 402 of this title, the discharge of any pollutant by any person shall be prohibited.
- 402: Administrator may . . . issue a permit for the discharge of any pollutant. . . notwithstanding section 301(a) . . .

# Discharge of a pollutant

- Section 502(12):
  - *“Discharge of a pollutant. . . means (A) any addition of any pollutant to navigable waters from any point source. . .”*
  
- Section 502(6):
  - *The term “pollutant” means, among other things, “agricultural waste discharged into water.”*



# What is a point source?

- CWA section 502 defines point source to include, among other things, “concentrated animal feeding operations.”
- Is an operation a Point Source?
  - *First question is whether it is an animal feeding operation (AFO).*
  - *Then ask whether the operation is a concentrated animal feeding operation (CAFO).*



# Water of the United States

- ❑ CWA 502(12): “discharge of a pollutant” states discharge to a navigable water.
- ❑ CWA 502(7): The term “Navigable waters” means the waters of the United States.
- ❑ 40 CFR 122.2(c) and (e): Water of the United States means all other waters such as intrastate lakes, rivers, streams (including intermittent streams) and their tributaries.



# Animal Feeding Operation (AFO) 40 CFR 122.23(b)(1)

- ❑ Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- ❑ Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.





# Large Concentrated Animal Feeding Operation (CAFO)

40 CFR 122.23(4)

- An AFO is defined as a large CAFO if it confines as many as or more than:

Cattle or cow/calf pairs	1,000	Turkeys	55,000
Mature dairy cattle	700	Laying hens or broilers (liquid manure handling system)	30,000
Veal calves	1,000	Chickens other than laying hens (other than a liquid manure handling system)	125,000
Swine (>55 lbs)	2,500	Laying hens (other than a liquid manure handling system)	82,000
Swine (<55 lbs)	10,000	Ducks (other than a liquid manure handling system)	30,000
Horses	500	Ducks (liquid manure handling system)	5,000
Sheep or lambs	10,000		



# Medium CAFO 40 CFR 122.23(b)(6)

- ❑ An AFO with numbers in the following ranges and which has been defined or designated as a CAFO
- ❑ Additional criteria...

Cattle or cow/calf pairs	300-999	Turkeys	16,500-54,999
Mature dairy cattle	200-699	Laying hens or broilers (liquid manure handling system)	9,000-29,999
Veal calves	300-999	Chickens other than laying hens (other than a liquid manure handling system)	37,500-124,999
Swine (>55 lbs)	750-2,999	Laying hens (other than a liquid manure handling system)	25,000-81,999
Swine (<55 lbs)	3,000-9,999	Ducks (other than a liquid manure handling system)	10,000-29,999
Horses	150-499	Ducks (liquid manure handling system)	1,500-4,999
Sheep or lambs	3,000-9,999		

# Medium CAFO 40 CFR 122.23(b)(6)

- ❑ Pollutants are discharged into waters of the United States through a man-made ditch flushing system, or similar man-made device; or
- ❑ Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility, or otherwise come into direct contact with the animals confined in the operation.



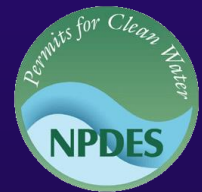


# Small CAFO 40 CFR 122.23(b)(9)

- ❑ A Small CAFO confines fewer than the number of animals shown in the previous two tables and has been designated by the permitting authority as a significant contributor of pollutants.
- ❑ Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.



# CAFO Rule Timeline



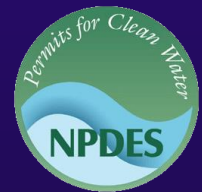


# CAFO Rule Timeline

- June 30, 2006 Proposed rule published to address *Waterkeeper* decision
- Mar 7, 2008 Supplemental proposed rule with additional options
- Oct 31, 2008 EPA Administrator signed final rule revisions responding to *Waterkeeper* decision
- Nov 20, 2008 CAFO rule revisions published in Federal Register (FR)
- Dec 22, 2008 Effective date for CAFO rule revisions
- Mar 15, 2011 *NPPC et al. v. EPA*
- May 9, 2012 Effective date for ID NPDES CAFO general permit
- July 20, 2012 FR Notice for final action on 2011 CAFO Reporting Rule
- July 30, 2012 FR Notice for Final CAFO Rule addressing *NPPC et al. v. EPA*



# ***National Pork Producers Council et al. v. EPA***






# Summary: *NPPC et al. v. EPA*

- Vacated the requirement that CAFOs proposing to discharge apply for a NPDES permit
- Upheld EPA's authority to require discharging CAFOs to apply for a permit, but...
  - *EPA lacks authority to assess penalties for failure to apply for a permit*



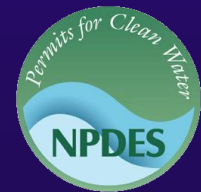


# Summary: *NPPC et al. v. EPA* (continued)

- ❑ Rejected challenges to land application requirements as untimely
- ❑ Rejected challenges to 3 letters sent after the 2008 rule



# EPA Revisions to NPDES CAFO Rule





# Summary: EPA Revisions to NPDES CAFO Rule

- ❑ Removes the specific “propose to discharge” requirement
- ❑ Deletes the timing requirements for when CAFOs must seek coverage
- ❑ Clarifies that all CAFOs must have a permit at the time that they discharge



# Summary: EPA Revisions to NPDES CAFO Rule (continued)

- ❑ Makes changes to EPA's requirements for renewing permit coverage
- ❑ Removes the option for owners/operators to voluntarily certify that a CAFO does not discharge or propose to discharge
- ❑ EPA did not solicit public comment on proposed regulatory changes



# Questions?

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